relevant. However as far as the order to enforce her judgment was concerned, I think it is only fair to say that the Appeal Court must proceed on the equitable principle that equity looks on that as done which ought to be done and will not suffer a wrong to be without a remedy. The respondent in this case could have applied to the Land Office to renew the T.O.L. or she could have asked to caveat the land but she had not apparently so done clearly it seems to me for one of two reasons, either because the T.O.L. was held by the court as an exhibit or because of the assurance given by the Assistant District Officer that it would be renewed and back-dated. In either case it seems to me to be quite unfair and unjust that the respondent should now be deprived of the fruits of her judgment merely because of the action of others for which she would not be held responsible or at least where she was entitled to issue would be acted in her favour. Under the circumstances I hold the T.O.L. must be deemed to be in force at the time when the order was made. In the result the learned Magistrate was right in making the order which she did except that since the respondent had only asked for an order for double rent from the date of the order, it will be so ordered; save otherwise I would therefore dismiss the appeal with costs.

The parties would however be at liberty to apply to this court for any consequential relief arising from the decision of this appeal.

Appeal dismissed.

Solicitors: *A.K.J. D'Cruz & Co.; Sri Selvarajah & Nirmala.*

TRENGGANU BUS CO. SDN. BHD. v. TRANSPORT WORKERS UNION

[O.C.J. (Hashim Yeop A. Sani J.) October 23, 1981]

[Kuala Lumpur – Originating Motion No. 42 of 1981]

Administrative Law – Certiorari – Award of Industrial Court interpreting previous award – Application to refer questions of law to the High Court refused – Application for certiorari to quash award – Whether award valid and binding after expiry date until superseded by another award or collective agreement – Industrial Relations Act, 1967, ss. 33 and 33A.

Industrial Law – Award of Industrial Court interpreting previous award – Application to refer questions of law to High Court refused – Whether application can be made to quash award – Whether award valid and binding after expiry date until superseded by another award or collective agreement – Industrial Relations Act, 1967, ss. 33 & 33A.

In this case the Industrial Court had made an award on a reference between the parties. Subsequently a joint application was made for the interpretation of the award. There were two areas of dispute, one on the interpretation of a clause of the original award, and the second whether the original award continued to have force and effect after its expiry date. The Industrial Court made its award directing payment to certain workers and also that the payments should be made to the workers until the date when the new collective agreement became effective. The applicant applied for the award to be referred to the High Court on a question of law but this was refused. The applicant then applied for an order of certiorari to quash the award of the Industrial Court.

Held: (1) according to the scheme of the Industrial Relations Act some finality must be read into the power of the Industrial Court to interpret its own award and the party should not be allowed to seek the aid of the High Court to quash the order under section 33 of the Act;

(2) in this case the Industrial Court was right in following the precedent and ruling that the award continued in force until superseded by a new award or a collective agreement.

Cases referred to:

(1) *New Zealand Waterside Workers Industrial Union of Workers* v. *Deputy Judge Dalglish and Members of the Waterfront Industry Authority* [1949] N.Z.L.R. 783.

(2) *L. Stanley* v. *G.B. Bull* [1952] M.L.J. 65.

The following case was also referred to in argument: *National Union of Commercial Workers* v. *Societe des Matcres Premieres Tropicales* Award 97/80 in I.C. Case No. 142 of 1980; 1980 Survey of Malaysian Law, p. 322.

CIVIL SUIT.

D. Xavier for the applicant.

K. Chandra for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani (delivering Oral Judgment): The applicant company is unhappy about Industrial Court award No. 147/80. This award was handed down on December 10, 1980 as a result of a joint application by the parties under section 33(1) of the Industrial Relations Act, 1967.

Under section 33 of the Industrial Relations Act 1967, the Industrial Court may vary any terms of an award if it considers it *desirable to do so*, but the variation however, must be *solely* for the purpose of removing any ambiguity or uncer-

tainty. An award so varied would become once again binding on the parties.

To get our perspective right it is necessary to go back to the original award and the subsequent application for interpretation under section 33 of the Act. The original award No. 88/76 was the result of a reference under the then section 23(2) of the Act between the applicant company and the respondent union. The award handed down after the hearing dealt with numerous provisions relating to wage structure and other benefits like annual leave, public holidays and bonus. Item 14 of the original award dealt with retirement benefits for various types of employees according to the years of service put by the employees. It is also specifically mentioned in the said Item 14 that the retirement benefits should apply even under the following circumstances namely, resignations (not to include dismissal) medically boarded out and death. At the conclusion of the award the Industrial Court ordered that the other benefits should be made effective from July 1, 1976. It was also ordered that the award *as a whole* was to endure for *3 years* until June 30, 1978.

When the original award was jointly referred for interpretation by the parties to the Industrial Court under section 33 of the Act it was expressly stated that the following areas of dispute on the interpretation of the award were to be resolved by the Industrial Court namely:–

1. The contention of the Company that any worker retiring on attaining the age of 55 years after the expiry of the Award should not be entitled to any retirement benefits.
2. The contention of the Company that any worker resigning not to avoid dismissal before and after the handing down of the award should also not be entitled to claim the retirement benefit as stipulated in Clause 14 of the Award.
3. The contention of the union that the Award in question was legally valid and binding on both parties even before and after the expiry date i.e. June 30, 1978 until such time a fresh award or collective agreement supersedes the existing Award or Collective Agreement or any part thereof.

It can be seen that there were really two areas of dispute for interpretation by the Industrial Court. The first area of dispute was on the implementation of Item 14 of the original Award itself. The second area of dispute was whether the original award continued to have force and effect even after the expiry date.

After hearing the joint application under section 33, the Industrial Court handed down Award No. 147 of 1980 on December 10, 1980 which is the subject of the present application. The award clearly indicates at page 2 of the award that the hearing in the Industrial Court was confined to submissions over the meaning of clause 14 of the original award. It dealt at length on this issue until page 4 of the award. After that the Industrial Court dealt in effect with the second issue and decided to abide by the ruling made in the previous award by the President of the Industrial Court whose reasoning was reproduced in the Award at pages 4 and 5. The relevant portion read as follows:–

"It is now standard practice for collective agreements to be for periods of three years although the parties contemplate many years of association with each other. The reason for the termination of the agreements once every three years is to enable the parties to review their respective positions at periodic intervals and where appropriate to improve the terms of the agreement. Generally, however the terms of an agreement are continued in subsequent agreements unchanged except with regard to the quantum of salaries and allowances. There is, therefore, a large degree of continuity and stability in the relationship between employer and employee. To achieve this purpose the majority of collective agreements contain a clause that notwithstanding the notice to terminate an agreement, the provisions of the agreement will continue to apply until a new collective agreement is concluded. This is because (in most cases) new agreements are not concluded until well after the expiry date of the old agreement due to prolonged negotiations.

Unfortunately, such a clause is missing from the agreement in this case. Yet it is clear that the parties intend to continue their existing relationship. There is no suggestion that because the agreement has come to an end the Company is closing shop or that the employees are going to walk out of their jobs. We are, therefore, of the view that the absence of a *continuation clause* does not put an end to the existing relationship between the parties. To hold otherwise would be contrary to public interest as it will create chaos in industrial relations. We accordingly hold that in the absence of a continuation clause in a collective agreement, the *status quo* as between the parties is maintained from the date of expiry of the agreement until a new collective agreement is concluded between the parties.

In maintaining the *status quo*, it follows that the provisions of the expired agreement will continue to apply to both parties and that neither party is at liberty to unilaterally discontinue the application of any term of the expired agreement. There shall be no exception to this rule except by mutual consent of both parties."

Thus at the conclusion of Award No. 147 of 1980 the Industrial Court ordered that since the parties had already entered into a new collective agreement effective from September 1, 1979 for 3 years the applicant company was ordered to make payments of the gratuity under clause 14 of the original award to the 18 employees referred to in exhibit (U.1) until September 1, 1979 if the same had not been paid by the applicant company.

The applicant seeks to quash Award No. 147/80 on various grounds set out in the statement but these grounds can be safely reduced to the following: –

1. In making an award directing payment to the 18 workers consequent upon interpretation of the original award No. 82/76, the Industrial Court exceeded its jurisdiction conferred by section 33 of the Act.

2. In referring to document (U.1) the Industrial Court relied on an exhibit which was produced by the respondent without the applicant being afforded any opportunity to challenge the veracity or truth of the document; and

3. Its decision was based on an irrelevant precedent and ruling of the President in Award No. 142 of 1980 which was made in a non-compliance case and not a case involving interpretation.

It can be seen therefore that the applicant is actually alleging that the Industrial Court –

(i) went beyond jurisdiction under section 33 of the Act which requires the Industrial Court merely to interpret;

(ii) committed breach of the rules of natural justice in denying applicants the right of hearing on Exhibit (U.1) and

(iii) took into consideration irrelevant matters in coming to its decision, namely the award of the Industrial Court in another completely different matter.

In my view there are really two questions to be answered in the present application. First, the application is to quash award No. 147 of 1980, which was an award under section 33 of the Act. The question that arises is whether the applicant is entitled to do so in the light of its failure to obtain an order from the Industrial Court under section 33A of the Act to refer the same questions of law to the High Court. Secondly, if the applicant is entitled to proceed in the present application whether the application can succeed on the merits.

After the amendment to the Act with effect from May 30, 1980 the new section 33A provides that any party may apply to the Industrial Court to refer an award to the High Court on a question of law which arose in the course of the proceedings and the determination of which had affected the award.

The applicant company made an application to the Industrial Court under section 33A on January 9, 1981. This application was subsequently heard by the Industrial Court and the order refusing the application was handed down on March 12, 1981. Almost simultaneously with the application under section 33A the applicant company also filed in the High Court notice of motion for leave to apply for an order of certiorari on January 10, 1981. Leave was, however, obtained only on April 22, 1981.

Thus on the facts it is clear that when leave was granted on April 22, 1981 and the notice of motion was taken out on April 23, 1981 the Industrial Court had already made an order under section 33A of the Act refusing the application to refer the questions to the High Court. The questions which are the subject of the present notice of motion are substantially the same as the questions referred to in the application under section 33A of the Act earlier.

Section 33B provides that any award, decision or order of the Industrial Court including a decision whether to grant or not to grant an application under section 33A shall be final and conclusive and shall not be challenged in any court. But it is settled law that despite the finality clause such decision may still be reviewed to ascertain if it was made without or in excess of jurisdiction. However it must be noted that the present application does not seek to quash the decision of the Industrial Court made under section 33A of the Act. Instead it seeks to quash the award No. 147 of 1980 which was an "interpretation award" made under section 33 of the Act. I have grave doubt that this is allowed by the Act because the function of the Industrial Court under section 33 is merely to interpret its own award and to make such variation to the award for the purpose solely of removing ambiguity or uncertainty. This in fact is clearly expressed in the language of section 33(2) of the Act. In my opinion according to the scheme of

the Act it is imperative that some finality must be read into the power of the Industrial Court to interpret its own award. Moreover the Industrial Court itself should be regarded as the most competent authority to interpret its own award. For these reasons it is my view that it is not the intention of the statute to allow an applicant to seek this court's aid to quash an order of the Industrial Court under section 33 of the Act.

The conduct of the applicant in the sequence of events referred to earlier is relevant. Certiorari is a discretionary remedy and therefore may be refused not only on the merits but also in the special circumstances of the case. See also *New Zealand Waterside Workers' Industrial Union of Workers* v. *Deputy Judge Dalglish and Members of the Waterfront Industry Authority*(1).

Issue of certiorari being discretionary the court in granting or refusing an application for certiorari is perfectly entitled to consider not only the conduct of the applicant but also the circumstances of the case. This principle is well stated by Wilson J. in *L. Stanley* v. *G.B. Bull*(2).

Even assuming that the applicant company is entitled to apply to set aside award No. 147 of 1980 it is my view that the present application is without merit.

Firstly, I do not think that the Industrial Court acted in excess of jurisdiction under section 33 of the Act by merely setting out its interpretation of clause 14 of the original award and ordering the 18 employees to be paid accordingly. This order of the Industrial Court is amply covered by the authority of section 33(2) of the Act referred to earlier. Sub-section (4) of the same section also provides that the decision of the Industrial Court under that section shall be binding on the parties in the same manner as the original award.

The second complaint of the applicant company was that there was a breach of the rules of natural justice when the Industrial Court relied on Exhibit (U.1) without giving an opportunity to the applicant company to challenge the document. From a look at the award itself and the affidavit filed on behalf of the respondent dated September 4, 1981 I do not think this allegation of the applicant company is true at all because it seems clear that at no time was there any objection or dispute when the exhibit was tendered.

Finally, the allegation that the Industrial Court followed an irrelevant precedent in award No. 142 of 1980 cannot likewise be accepted. The award relied on was an award of the Industrial Court which is a public document and the Industrial Court was perfectly entitled to consider the ruling made by the President in the award. In any case I find a lot of logic in the ruling of the President in the award. To my mind it is immaterial whether there is an express clause stating that collective agreement shall continue after the expiry date until replaced by a new collective agreement. I think this must be necessarily implied. The primary purpose of the Industrial Relations Act is to introduce and sustain a condition of industrial peace and harmony and it would be against all logic to construe that a collective agreement ceaes to operate on a certain date expressed in it and thereafter there is a return to a condition of discord and disharmony in the industrial relationship of the parties concerned.

The contention of the respondent is the correct interpretation and that is that the original award in this case was legally valid and binding on the parties before and after the expiry date until such time that a fresh award or a collective agreement supersedes the collective agreement or any thereof.

For the above reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *Sethu, Ghazali & Gomez; K. Chandra.*

ZULKIFLE BIN MAJUN v. DASON GABAN (AND 20 OTHER PETITIONS)

[O.C.J. (Seah J.) August 25 & November 9, 1981]

[Kota Kinabalu – Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 & 25 of 1981]

Election Law – Amendment – Application to amend Election Petitions – Allegation of corrupt or illegal practice – Application filed out of time – Application to drop some of the charges and to cure clerical error – Amendments allowed – Election Offences Act 1954, ss. 8, 9, 10, 32(a), (b), (c) 33(1) & (4), 38(1)(a) & (2) & 109(5).

The present case concerned 21 Election Petitions. The applicants in these petitions sought for leave to amend the Election Petitions. Since the charges in paragraph 3 of the